IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.187 OF 2007

Ramchandra Sakharam Galande
(Since deceased through his heirs and Legal representatives)

1A. Smt. Shantabai w/o. Ramchandra Galande
and another. .. Appellants

v/s.

Shri Sitaram Dnyanu Galande
(Since deceased through his heirs and legal representatives)

1A. Shri Shankar Sitaram Galande and others .. Respondents

Mr. S.R. Page for the appellants.

CORAM : ABHAY S. OKA, J.
DATED : 29TH NOVEMBER, 2007

P.C.

Heard the advocate for the appellants.

2. The appellants are the unsuccessful plaintiffs. According to the case of the plaintiffs, a sale deed was executed by them on 11th May, 1978 for consideration of Rs.30,000/- in favour of the original deceased defendant. The contention of

the appellants-plaintiffs is that the sale deed was never intended to acted upon and it was executed as a security for the amount advanced by the deceased defendant to the appellants by way of help. The prayer in the suit is for possession of the suit land. The suit was contested by the legal representatives of the deceased defendant. The trial court dismissed the suit. However, the trial court recorded a finding that the transaction was hit by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The appeal preferred by the appellants-original plaintiffs has been dismissed by the appellate court. The appellate court held that provisions of the said Act of 1947 will not apply to the said transaction.

3. The submission of the advocate for the appellants is that a very valuable property was purportedly sold for negligible consideration of Rs.20,000/- which itself shows that the sale was not to be acted upon. He submitted that the appellate court has committed an error by holding that bar of the said Act of 1947 will not apply.

4. I have considered the submissions. The appellate court noted that though the sale deed was executed in May,

1978, the suit was belatedly filed in February, 1989. The appellate court noted that in the meanwhile, the defendants had mortgaged the land to one Droupadabai and they got it reconveyed in their favour. There is nothing on record to show that notice under section 6(2) of the said Act of 1947 was issued. In the absence of material to show that the notice was issued, in view of the settled legal position, the bar will not be attracted. While dealing with bar under section 8 of the said Act of 1947, the appellate court recorded that the sale deed does not result into creation of a fragment.

5. Considering the findings recorded, no substantial question of law arises. Section appeal is dismissed.

ABHAY S. OKA, J.